# CORRESPONDENCE/MEMORANDUM

State of Wisconsin

WISCONSIN DEPT. OF NATURAL RESOURCES

DATE: February 18, 2005

TO: NR 115 Advisory Committee Members

FROM: Carmen Wagner, WT/2

SUBJECT: Comments from January 2005 Draft of Changes to Ch. NR 115, Wis. Admin. Code

The summary provided below is based on written comments provided by advisory committee members on the January 2005 proposed draft of ch. NR 115, Wis. Admin. Code. The comments have been separated out by sections in the proposed rule, and have been condensed to avoid repetition. This document does not contain responses to the comments. The next draft of proposed changes will be available when the Department requests permission from the Natural Resources Board for public hearings.

**Sections**

**NR 115.01 Purpose**

C: NR 115.01 and the majority of the purpose sections at the beginning of nearly all of the subchapters are not necessary. In addition, the purpose sections seem to limit the ability of counties to grant variances and special exceptions. WCA feels strongly that the ability of counties to grant variances is an issue that should not be dealt with through an administrative rule revision process. One of the stated reasons for rewriting this rule was to provide counties with direction and the necessary tools to preserve Wisconsin's waterways, not to limit the powers granted to counties through state statute.

C: I don't recall ever discussing this language at any of the AC meetings and feel it is far to reaching and the majority of this section should be eliminated.
(2) should end after "aquatic life".
(3) should end after "disposal fields near navigable waters".
(4) should be eliminated entirely.

C: Regarding subsection (4), this paragraph, and the department's January 4, 2005 commentary upon its purpose are both wholly unacceptable. The minimum standards in this draft already exceed current NR 115 standards. For the department to declare that in certain, unspecified circumstances, it will require even more rigorous (and undefined) standards is troubling. We find it hard to believe that the Natural Resources Board or the Legislature will accept such vague rulemaking. This paragraph should be deleted.

C: Regarding subsection (4), the words "need to" should be struck from this paragraph so that county ordinances that comply with the letter of NR 115 are sufficient to satisfy statutory requirements. Your comments in response to this suggestion only further illustrate our concern. We agree that counties retain the authority to promulgate ordinances more stringent than the minimum standards, but that is different than saying that there are circumstances where they must do so. The Department does not have the authority to require standards that exceed those promulgated by rule. The agency cannot require the counties to pass shoreland zoning ordinances that depend on a moving target that is left up to the counties to find. This needs to be corrected.

C: Regarding subsection (4), We continue to have concerns about the change from "may" to "may need to" because it suggests that even though a county adopts a shoreland zoning ordinance that meets the minimum state standards the county may not be in compliance with Wis. Stat. Sec. 281.31 (1) and (6) unless it adopts more restrictive standards.

C: NR 115.01 (4) states that "counties may need to adopt more protective shoreland zoning and land division regulations than are required by the minimum standards in this chapter". The objective of the advisory committee's work (and the rewrite) was to develop minimum standards that counties can build upon rather than provide the Department with the ability to require counties to exceed the standards in certain cases. This provision is too vague and it is a step in the wrong direction when it comes to local flexibility. To this end, this entire provision should be removed.

C: The words "need to" should be taken out of this paragraph.

## NR 115.02 Applicability

C: Annexed areas should not be covered by shoreland zoning and should fall under the incorporated area's zoning to allow for the development of those areas consistent with "Smart Growth. (In-Fall Areas)

C: Regarding subsection (4), this needs to be clarified. Section 13.48 (13), Wis. Stats., just adds to the confusion over when the State is required to obtain permits. A particular question to be answered is when a State project is for the public rather than just for the benefit of State employees. For example, the construction of a beach in a State Park versus the construction of an office building for State employees.

## NR 115.03 Definitions

C: The Phrase "but are not limited to" has been struck in this draft. Suggest that the phrase "examples include" could be inserted. To limit all Counties in the State to the specified accessory structures is too limiting.

C: "But are not limited to" language should remain in definitions of "accessory structure", "mitigation", and "natural areas management".

C: Retaining walls are listed under "accessory structure" and "structure" in the definitions.

C: "Camping units" should be moved every 60 days.

C: The definition of "camping unit" should be the same as in HFS 178.

C: Regarding the definition of "floodplain", eliminate the phrase "as shown on the county's official floodplain zoning maps". With this phrase added, it could mean the county would have to official amend the map before issuing a zoning permit.

C: Regarding the definition of "footprint", what's the difference between a porch, deck and carport? Carports could be considered part of the footprint. The definition seems to conflicts with the accessory structure definition.

C: Regarding the definition of "impervious surfaces", take out the comma after "gravel". If you have a gravel driveway, it can be considered impervious, but if you have gravel placed around shrubs that are adjacent to a house that would not be considered impervious. The definition in NR 151 should be used to provide consistency with DNR enforced codes.

C: Regarding the definition of "impervious surfaces", crushed stone shouldn't be considered impervious or we should stop using it in drainfields.

C: Regarding the definition of "lot", concerns about lots created prior to that include potential "lakebed" still not dealt with.

C: Regarding the definition of "mitigation", the phrase "but is not limited to" has been struck in this draft for the definition of mitigation. This phrase could be substituted with the phrase "examples include". POWTS replacement should be an option for mitigation.

C: Regarding the definition of "mobile home park", it should be consistent with Comm 95 (the administrative rule that relates to the regulation and licensing of mobile home parks for the purpose of protecting public health and safety.)

C: Regarding the definition of "natural areas management activities", the definition gives a lot of freedom for an activity to be completed without any restrictions other than a "professional natural resource manager" develop the plan and the Department approve the plan. This definition should be modified to state some limitations for the activity.

C: Regarding the definition of "non-permanent campsite", the recommended 120 days time frame is inconsistent with NR 116, which is 180 days. Consistency would make it easier for county staff to enforce both rules. Ultimately, WCA recommends that this provision focus on regulating density rather than a time limit. Time limits are difficult to enforce, unless the campgrounds are going to be responsible to enforce this provision.

C: Regarding the definition of "non-permanent campsite", it should be eliminated.

C: Regarding the definition of "open fence", the current definition is unusual and would be very difficult to enforce. The "or flow of air through the fence, and that allows wildlife to move under, over or through the fence" portion of the sentence should be removed.

C: Regarding the definition of "ordinary maintenance and repairs", doesn't seem to reflect unlimited repairs and maintenance.

C: Regarding the definition of "ordinary maintenance and repairs", should be redefined to simply say what ordinary maintenance and repairs is. This definition includes what is actually code language. If the replacement of a flat roof with a pitched roof is going to be allowed it should allowed in the code itself and not in the definitions.

C: Regarding the definition of "ordinary maintenance and repairs", in the second sentence, add the phrase "but is not limited to" after the word "includes.

C: Regarding the definition of "ordinary maintenance and repairs", this provision needs clarification.

C: Regarding the definition of "porch", it should be changed to "a roof, open area, which may be screened, attached to or part of a building, and with direct access to or from it."

C: Regarding the definition of "primary shoreland buffer" and "secondary shoreland buffer", they should be combined into one definition, which should be "shoreland buffer". The secondary should buffer is not really a buffer, but an area that prohibits structures.

C: Regarding the definition of "professional natural resource manager", this definition does not appear to have a useful place in this rule or should be clarified. This "Professional" is given a lot of freedom in getting a plan approval from the DNR.

C: Regarding the definition of "replacement", this definition should be more clear and specific. For example, the "substantially all" language may present a gray area. This will be very difficult, if not impossible, to administer.

C: Regarding the definition of "residential use", it should be consistent with Comm 21-25, which relates to dwelling units. We question why camping is in this definition.

C: Regarding the definition of "shoreland-wetland zoning district", WCA recommends that the Department delete all of the language after NR 115.07. County officials feel that Wisconsin wetland inventory maps may not be sufficiently reliable for this purpose.

C: Regarding the definition of "structural alteration", language is too specific. WCA recommends that this read "anything that is not ordinary maintenance and repair". This recommendation would provide for more county flexibility.

C: Regarding the definition of "structure", it should be consistent with NR 116 or state: "structure" means any man-made object with form, shape and utility, that is constructed or otherwise erected, attached to or permanently or temporarily placed on the ground or another structure.

C: Regarding the definition of "structure", eliminate the examples and take out the phrases "river bed", "stream bed", and "lake bed". Also take out the word "either" before the phrase "upon the ground".

C: Regarding the definition of "structure", should "piers" be listed in the section of "includes"? Piers are included in "Structures that Counties May Exempt".

C: Regarding the definition of "wetland buffer", language is inconsistent with the NR 151 standards. It should be revised to reflect the NR 151 standards.

C: Regarding the definition of "wetland buffer", land disturbing activities should be allowed right up to wetlands provided erosion control is used and also the incorporation of BMPs.

C: Regarding the definition of "wetland buffer", the prohibition of land disturbing activities adjacent to a wetland is inconsistent with the standards of NR 151 and should be revised to reflect NR 151. As written, this will encourage the filling of wetlands as property owners have more land taken out of productive use.

## NR 115.05 Shoreland zoning districts

## NR 115.07 Shoreland-wetland zoning

## NR 115.09 Land division review

**(2) General**

C: The current language relating to land division would appear to be satisfactory making this language unnecessary.

C: Delete "combine or reconfigure". This should just be for the creation of lots.

**(3) Navigable bodies of water within lots**

C: The Wisconsin Builders Association believes the Attorney General's opinion cited by the department in the creation of this section is in error; however we recognize that the department does not have the ability to challenge it. That said, however, this paragraph is not consistent with that opinion. The opinion states that no lot may be created that is divided by a navigable water body. It does not say that a lot may be created IF there is buildable area on both sides of the water body. Our organization will continue to oppose this provision, but it should at least be consistent with the AG's opinion.

C: This provision prohibits new lots from being created if the lot is divided by a navigable stream unless each portion of the lot meets the minimum lot size and density standards. Given that many drainage ditches are considered "navigable," this provision could limit the development opportunities on a considerable number of properties throughout the state.

C: I don't think you are creating a new lot. I feel the lot is already divided by the navigable water body.

C: Recommend that this be removed from the rule since it is contrary to current survey statutes (Ch. 236).

C: Eliminate this paragraph. You can just have a reference to ch. 236, Wis. Stats., instead, which already deals with navigable bodies of water within lots.

**(4) Substandard lots in common ownership**

C: Why is this in here, counties already know they can be more restrictive. Further I am opposed to allowing treatment of lots differently simply because they are in common ownership.

C: WCA supports this provision as it allows for county flexibility.

## NR 115.11 Lot size and development density

**C:** The purpose of this language appears questionable and WCA recommends that it be deleted.

**(2) General**

C: Wisconsin condominium law prohibits treatment of condominiums differently than any similar land use (e.g., multifamily apartments). It is unclear to us whether this paragraph conflicts with that law.

C: Regarding paragraph (c), just say the lot width shall be measured at the OHWM and at the shoreland setback line, because we do not understand the proposed language. Is the current NR 115 language a problem?

C: Regarding paragraph (c), this section is complicated and may be difficult for most of the general public to understand. It may be helpful to include a drawing or other visual aids to show how properties are to be measured. Also, by changing the manner in which lot-widths are measured, we are concerned that this provision will make many existing lots nonconforming. At a minimum, this provision should be amended to apply to only new lots.

C: Calculating maximum density for condominiums, "…shall have a total area equal to the sum of the minimum area standards in pars. (3), (4) and (5) for each of the residences"… I suggest

adding the word “either” after “in” and “or” instead of “and” so as to read “…equal to the sum of the minimum area is either pars. (3), (4) or (5)…” Otherwise one might infer that the area standards in each of the pars. should somehow be added together.

C: This provision fails to recognize the need for the creation of outlets for specific purposes.

C: Recommend that the Department use the existing rule language regarding lot width. The proposed language is not clear to county surveyors and county code administrators and would likely result in misinterpretation by the general public.

C: Eliminate the note after this paragraph. NR 115 needs to recognize the creation of outlots for specific purposes or unintentional purposes. Is the intent to eliminate habitable structure or is there another intent?

**(3) Residential uses**

C: NR 115.11 (3) (a.1 and 2) and (b): WCA recommends that the Department use the current rule language.

C: I believe that a minimum width of 100 feet for a lot without a sewer (not to mention 65 feet with a sewer) is too small, considering the larger houses and bigger boats that people are putting in. But I understand the problems of creating non-conforming lots and I realize that the counties have the authority to require wider lots on selected lakes, such as those that have low outflow.

C: Regarding multi-family density standards, these standards, while patterned after standards that are in use, are more restrictive than those currently in use. There is no rational basis for choosing a more restrictive standard. This will make additional lots nonconforming, something we have been trying to avoid. We recommend a standard requiring an additional 30% of the base minimum lot size for additional units in a multifamily building.

C: As we have discussed, we believe that the department has failed to adequately justify that each unit in a multi-family development has the same proportionate impact on the environment as a single –family residence/duplex. The proposed minimum lot-size standards fail to take into consideration that most multi-family development results in less land disturbance, impervious surfaces, and footprint size per unit than single-family development. Accordingly, we recommend that the department modify the proposed minimum lot-size standards for multi-family development to better reflect the smaller per unit impact on the environment. The increased minimum lot-size requirements for multi-family development will likely result in more land being developed in shoreland areas in order to meet the market demand for waterfront property.

C: Regarding paragraph (c), removing the provision that allows counties to adopt their own standards is a bad idea. Deletion of this provision will give critics more ammunition to claim that these proposed changes are heavy handed and just another attempt by the state to take away local control.

C: Regarding subdivision (3)(a) 2., 40’ of additional frontage is too much and promoted sprawl. (should be 30’ maximum). (Goes against Smart Growth) (Missing distance from resource language)

C: Regarding subdivision (3)(b) 2., additional units should only require 15 feet of additional frontage. (Missing distance from resource language)

**(4) Campgrounds**

C: NR 115.11 (4) (c and d): WCA recommends that the Department delete both provisions or revise the provisions to provide general statements. The current language is too specific and counties should determine if staff is sufficient to enforce these provisions.

C: What are nonpermanent campsites being treated differently? They have as much or more impact on the resource as any other type of use. Ex. (you can park your bus there 120 days) 10 buses every 100' seems a bit short when compared to what is required for multifamily (which pays more taxes on improved values) and typically uses the resource less.

C: Keep the requirements for campgrounds general. Let individual counties be more specific if they choose to.

**(5) Mobile home parks**

C: Will this provision restrict mobile home parks? We suggest prescribing a density that is similar to the density for campgrounds.

C: NR 115 should only be setting a maximum density. Individual counties can determine all other requirements.

**(6) Keyhole lots**

C: Recommend that the 20,000 square feet and 100 foot width with access for a maximum of 4 dwelling units be the only requirements in NR 115.

C: We believe this paragraph would be found to violate the takings clause of the Constitution by limiting a riparian's right to grant access. It should be deleted and so-called "keyhole lots" subjected to the same dimensional requirements as other lots.

C: This section does not track with the requirements of statute. Easements are allowed for crossing property under Wis. Stat. § 30.133, yet this section requires a conditional use permit if such an easement is to be granted. The DNR does not have the authority to restrict the alienation of property rights that are specifically allowed under statute.

Further, the Department doesn't appear to have the authority to place different restrictions on lots that are under joint ownership than it would for lots under individual ownership. We would suggest that you remove this provision. It is a potential source for a court challenge that may affect the rest of this chapter. The standard development density rules, lot size restrictions and other provisions of NR 115 regulate keyhole lots just as well.

C: The provision appears to make existing keyhole lots illegal. If this is true, I don't think the department has the legal authority to invalidate deeded access rights that property owners currently own. This would create tremendous chaos in the real estate marketplace and legal title business, not to mention a public relations nightmare for the department.

C: How does this apply to public boat landings and lots that are owned by multiple people? Ex. (20 people have a $1/20^{th}$ interest in a single lot). How do you stop them from using it?

C: This provision is unclear. We recommend that this provision should be deleted and "keyhole lots" should be subject to the same dimensional requirements as other lots.

**(7) Other uses**

C: The code should clearly allow the creation of outlots where a primary structure will not be allowed. Also, NR 115 should allow for structures that protect these lots and provide safe access for activities exercising riparian rights, including erosion control structures, walkways, stairways, and piers. Currently, the plain language of the code seems to prohibit outlots that would not conform to the standards required for construction on the lot.

C: This provision seems to be in direct conflict with the note following NR 115.11(2)(a). We strongly discourage the department from interfering with the ability of property owners to create outlots or other small lots that are not intended to be developed. Regulating the development of waterfront property is one thing, but regulating ownership of property is clearly beyond the scope of department's statutory or "public trust" responsibilities.

C: What about lift stations and telecommunications infrastructure?

C: NR 115 needs to recognize the creation of outlots for specific purposes or unintentional purposes. Is the intent to eliminate habitable structure or is there another intent?

**(8) Planned unit development**

C: WCA strongly objects to this provision. How about granting counties the ability and making it a provision of land division ordinances (then the Department could review the entire ordinance when the county submits the ordinance)?

C: Eliminate :Counties may apply to the department for approval of standards for alternative development" and replace with "Counties may adopt standards for alternative development".

**(9) Substandard lots**

C: If an existing lot cannot be developed according to the proposed setback, vegetation, and impervious surface standards, will this lot be deemed unbuildable? According to department estimates, how many existing lots will be unable to meet one or more of the development requirements set forth in this provision? Does the department encourage the department lots from being used for commercial, industrial, agricultural, conservation, or recreational purposes unless it is 20,000 square feet and a minimum width of 100 feet. Does this apply to both new and existing lots? Developed and undeveloped lots? If it applies to existing lots, will these lots be nonconforming? Will such nonconforming lots be expected to eventually be brought back into conformity? What, if any, restrictions will be placed on the improvement or expansion of structures on these lots?

C: Counties may not be able to enforce this provision. We recommend that this provision be optional. On a side note, restoration should be tied to the structure not the lot size.

C: Eliminate the reference to shoreland vegetation standards. More specifically, the requirement that a buffer be established. If a lot can meet all other requirements of NR 115, than the buffer should not be required.

## NR 115.13 Shoreland setbacks

**(1) Purpose**

C: The purpose statements throughout the rule are unbalanced and focus only on the need to limit development and protect the environment. The purposes statements should be broadened to reflect the other important factors that must be in weighed in normal course of developing and administering land use regulations including, but not limited, increase in local property tax revenues, the ability of property owners to have reasonable use and enjoyment of their property, and the importance of economic development and tourism on local economies.

**(2) General**

C: It's known that a 100-foot setback would provide a deeper buffer with more infiltration of water run-off and more natural habitat, therefore better protection of the lake and wildlife. However, most of the houses on lakes have been built at 75 feet, and increasing it would create so many non-conforming houses it would be publicly unacceptable. With the setback fixed at 75 feet, it becomes much more important that other measures be established to protect the lakes, and that those measures be enforced.

C: Why do only certain sections of the rule acknowledge that counties may grant variances? Are counties prohibited from granting variances from various provisions unless specifically authorized by the rule?

C: Will the application of this provision to existing developed and undeveloped lots result in the creation of nonconforming lots and structures? If so, how many lots and structures does the department estimate will be created under this provision?

C: Eliminate the examples and just say a 75 foot setback is required for structures.

C: Eliminate the date "August 24, 2004" and put back in "Revisor: insert the effective date of this rule".

**(3) Permit required**

C: We strongly oppose this provision and recommend that it be deleted.

C: Does this mean that counties will have to adopt a zoning permit system for the placement of ALL structures in shoreland areas? Given the breadth of the term "structure" as defined in this rule, this will be a tremendous burden for both counties and property owners.

C: End this paragraph in the first sentence after the words "shoreland zone". Also, remove the words "structural alteration" for the first sentence. The rest of the language just causes confusion.

**(5) Structures that counties may exempt**

C: Boathouses must be allowed as an exemption to the 75 foot minimum setback.

**C:** We are generally supportive of providing counties with flexibility to exempt certain accessory structures. However, the more we look at this section, the more the detail becomes problematic. For example, a county can exempt a walkway, but only if it is 4 feet wide or less. This makes every walkway wider than 4 feet nonconforming. Even apart from the non-conforming issue, the level of prescription seems unwarranted. If a site can meet the vegetated buffer requirements and

the infiltration standards why do we care whether the walkway is 2 feet or 5 feet? What about a retaining wall along an exposed basement of a non-conforming principal structure. It if it is not for erosion control is it prohibited? Some of these standards are tied to best management practices while others are more prescriptive. The particular standards we think need to be more performance based rather than prescriptive include:

- (b) Walkways, stairways and lifts
- (f) Erosion control structures
- (n) Sidewalks, steps and landings.

*(a) Chapter 30 and 31 structures*

C: Instead of "boat shelters", suggest "open-sided, movable boat shelters", so as not to imply boat houses.

*(b) Walkways, stairways and lifts*

C: Will the new standards outlined in the section apply to existing structures? If so, will existing structures be considered nonconforming if they do not meet these requirements?

C: NR 115.13 (5) (b) (1-6): This portion of the rule is too specific for an administrative rule. We recommend that the Department draft a model ordinance rather than place this in the rule.

C: Keep general so it does not conflict with the Uniform Dwelling Code. These should be minimum standards only.

*(c) Signs*

C: Comment #41 in the previous correspondence, dated January 4, 2005, indicated that a temporary sign that is "small and easily moved by hand" would not be subject to this provision. Would a typical real estate "for sale" sign be considered "small and easily moved by hand" and thus be exempt from the requirements under this provision? If not, what is the meaning of "small and easily moved by hand?"

C: Keep general so it does not conflict with the Uniform Dwelling Code. These should be minimum standards only.

*(f) Erosion control structures*

C: What constitutes "significant on-going erosion" under this provision?

*(n) Sidewalks, and steps and landings at entrances*

C: If a property has a sidewalk or sidewalks that do not meet the requirements in this provision, will the properties be considered "nonconforming?"

C: "…and steps and landings at building entrances that are no wider than the door to which they are adjacent." I suggest at least a two-foot allowance in width of steps/landings vs. the door width; otherwise it could be a safety hazard in addition to being visually unattractive.

C: Keep general so it does not conflict with the Uniform Dwelling Code. These should be minimum standards only.

**(6) Setback reduction process**

C: While this procedure is an improvement over prior proposals, the maximum footprints are uniformly too small to allow for even a modest-sized home and garage. A cottage with a two-stall detached garage would be limited to less than 500 square feet of living area if its porch was 35-feet from the water. Appendix A should be revised to accurately reflect the numbers proposed by Mr. Schiffmann.

C: While the restoration of setback averaging is welcome, the specific distance requirement (distance to adjacent principal residential structures) is too inflexible and should be left up to counties.

C: Great concept, but I feel the allowable square footages are too low and need to be increased in size more consistent with what I had proposed in November. Also, what happens when your expansion gets to or crosses the 75' line, what's allowed?

C: For setback averaging formula, look at Oneida County's formula that was recently amended, it seems to work well.

C: NR 115.13 (6) and NR 115.13 (6) (b) (2): The distance requirement would eliminate the setback averaging option. This should be left up to the counties.

C: NR 115.13 (6) (b) (2) (c): We feel strongly that the entire provision should be deleted and replaced with "counties may adopt an alternative setback reduction formula that is different than the formula described in par. (b) (1)".

## NR 115.15 Shoreland vegetation

**(1) Purpose**

C: The purpose statements throughout the rule are unbalanced and focus only on the need to limit development and protect the environment. The purposes statements should be broadened to reflect the other important factors that must be in weighed in normal course of developing and administering land use regulations including, but not limited, increase in local property tax revenues, the ability of property owners to have reasonable use and enjoyment of their property, and the importance of economic development and tourism on local economies.

**(2) General**

*(b) Ground layer required*

C: These sections (NR 115.15 (2)(b) and NR 115.15 (4)) require the establishment and maintenance of ground layer vegetation. In many places, especially the northern counties, ground layer vegetation is very sparse or non-existent along shorelines, especially in areas of heavy canopy cover, unsuitable soils, direction of the slope or rocky surfaces. This provision is very rigid, and would require establishment of ground layer vegetation even where none exists naturally. To accomplish this, mature trees may have to be removed. We suggest that this provision be changed so that the natural state, even if it is largely not vegetated and mostly leaf litter, pine needles, rock, etc, can be maintained or re-established.

C: "Established and maintained" may be very difficult in northern Wisconsin.

*(c) Shoreland buffer vegetation plan*

C: We interpret this provision to require a buffer plan when a parcel is divided, regardless of whether a structure will be built on any of the resulting lots. This would mean that the person dividing the parcel would have to craft buffer plans for each new lot created, even though he or she may not know how that lot will eventually be used. This should be changed to require a buffer plan upon a mitigation trigger other than lot creation or sale, like the presence of a principal structure or the construction of such a structure.

C: (1 and 4): Delete both provisions. A property owner should not have to submit a shoreland buffer vegetation plan for a principal structure that meets the setback to the OHWM or for the creation of a lot.

*(d) Multiple-unit development buffer plan*

C: Condos should be treated the same as multi-unit development and not delineated from any other form of ownership.

C: This section gets too prescriptive and sounds more like an ordinance than a rule and should be left up to the counties to incorporate what is needed in those areas.

C: The note and example are ridiculous. Ten units on 1,000 feet is not more dense than is permitted by straight subdivision. Which makes my point, let the counties deal with it rather than dabble with something you have no experience with.

**(3) Primary shoreland buffers**

C: Eliminate the primary and secondary buffer designation. Change to just shoreland buffer. The secondary buffer is really not a buffer just an area in which structures are prohibited.

*(c) Access corridor*

C: The size of access corridors must be kept to a minimum to minimize destruction of the primary buffer. People prefer a natural-looking shore to one that is disturbed by wide access corridors and marred by excessive landscaping. I support the provisions of the draft regarding access corridors. A maximum corridor width of 40 feet on lots under 200 feet wide is a reasonable compromise. 40 feet is plenty of width for practically all lots. I have never seen a path or stairway that needed to meander more than 40 feet sideways. The primary buffer is only 35 feet deep, and any clearing wider than 40 feet is a field or a lawn, not a corridor.

C: "For lots …with more than 200 feet of width…the total width of the corridor or corridors shall not exceed 20% of the lot or parcel's width"… I am very uncomfortable with this if we do not impose a maximum. Large estates, property which included adjacent shoreland/wetland (usually inexpensive and unbuildable) or lots on a peninsula could have an access corridor width extending along the front of an entire long house. I don't know the solution, but I think we need to somehow address it.

C: Treating different lot widths with different frontages disproportionately as it relates to access corridors in unfair and discriminating against those larger parcel owners.

C: It's a viewing and recreational corridor as well. Why do you have to leave any trees?

*(d) Vegetation management in the access corridor*

C: This language is confusing and will be unenforceable. Counties do not have the necessary resources to be the pruning police.

C: Eliminate this paragraph – it is too detailed and will be more or less impossible to enforce.

*(e) Vegetation management outside the access corridor*

C: This language is confusing and will be unenforceable. Counties do not have the necessary resources to be the pruning police.

C: Eliminate this paragraph – it is too detailed and will be more or less impossible to enforce.

*(f) Alternative vegetation management plan*

C: This section is very confusing. It also seems to be very prescriptive, which defeats the purpose of an alternative option.

C: Too confusing.

C: Remove "conditional use" and replace with "a". Sections 1-4 will be difficult to enforce. We recommend less specific language that gives counties more flexibility.

C: Instead of having an alternative vegetation management plan be approved by conditional use permit, create standards that support the legislative purpose of the statute that must be followed for a county staff to approve an alternative vegetative management plan.

**(4) Secondary shoreland buffer**

C: If turf grass is allowed, then we question the purpose of this provision. Eliminate it.

**(7) Natural areas management**

C: This language appears to exempt state actions from shoreland regulations.

C: Eliminate or if this is kept, it has to have some clear limitations on size of area, extent of work. etc.

**(11) Temporary access**

C: This section references access for construction sites. That term tends to indicate major site work like the building of a principal structure. However, in many cases the work may be very limited such as the installation of riprap. We think that it would be better to use the terminology "project site" rather than construction site and refer to "equipment" rather than construction.

In addition, we are concerned about the provision that requires "vegetation shall be established before the onset of winter or temporary ground cover shall be established…" In some cases, the least environmentally intrusive way of doing construction is during the winter. For example, some shoreline work can be done during the winter by driving equipment on the ice, and in so doing, avoid having to remove vegetation on shore. The rule should provide greater flexibility in this area.

## NR 115.17 Impervious surfaces

C: The only standard that needs to be stated in this paragraph is that impervious areas shall not exceed 20%. The requirement to have a study done for the 10 year, 24 hour event is unreasonable, impractical, and is offset by the requirement listed in 115.17 (3)(b).

C: Place the note that is under (3)(a) into (b). The requirements in this paragraph to preserve or establish a shoreland buffer if imperious surfaces exceed 20% are reasonable and more easily enforced than requiring a study for the 10 year, 24 hour storm event.

C: This entire section needs a great deal of work. Counties do not have the staff to enforce this language and in many cases counties will have to hire engineers to determine numbers and ultimately to enforce.

C: Requiring implementation of management practices that result in no additional discharge to the lake is a perfect solution to the problem of run-off from impervious surfaces. I whole-heartedly support the draft.

C: We have consulted with engineers on this proposal. This zero-increase standard will require all single-family home sites to be engineered. This was not the intent of the department or the advisory group. In addition, many areas of the state will require much more than simple rainwater diversion to meet this standard. Requiring property owners to install and maintain stormwater detention basins will be problematic on a single-family home site, to say the least. We oppose this section as currently drafted.

C: Rather than requiring counties to adopt additional regulations, we recommend that the department simply reference the standards in NR 151 so that we minimize the possibility of inconsistent water runoff standards in this state.

C: Entire section needs to be eliminated.

## NR 115.19 Land disturbing activities

C: This is covered adequately in the draft.

C: Keep land disturbing activities section very general. Leave the purpose section only.

**(1) Purpose**

C: Replace “shall” with “may”.

**(2) General**

C: Increase the wetland buffer. Ten feet is inadequate and can be easily destroyed by a bulldozer backing up over it. Make consistent with existing wetland buffers.

C: Eliminate the wetland buffer requirement completely. No such requirement has been in NR 115 before and this issue can still be handled by review of all filling, grading and excavating that is either associated with a structure or done for other purposes.

C: Eliminate the entire provision. Portions are not consistent with NR 151. This would force counties to create an additional permit program to regulate construction erosion. This is another unfunded mandate.

C: This language is not consistent with NR 151. The wetland setback standard in NR 151 is a post-construction standard. Land-disturbing activities are allowed within the setback. This is necessary to facilitate excavation and grading of properties. Given the high cost of lakefront land, imposing an additional 10-foot "no touch" zone will dramatically-limit buildable areas on lots, and will likely lead to the unfortunate circumstance of more wetlands being filled.

C: The 50-foot wetland setback provision was removed, and replaced with a "wetland buffer" requirement. This requirement prohibits land disturbing activity within 10 feet of the boundary of any wetland within the shoreland zone. Given the inclusive definition of "land disturbing activity," this is still a wetland setback. This will result in additional nonconformance and will promote applications to fill wetlands that need not be filled. This buffer provision would prohibit the reconstruction of an existing foundation if it is within 10 feet of a wetland boundary, and may affect an applicant's ability to successfully manage stormwater.

This provision should be changed to require a county-approved re-vegetation plan for land-disturbing activities within ten feet of a wetland for areas where the approved structure will not be placed. In many cases, the product of such a plan can actually provide a more effective buffering ground cover.

C: Should be handled with BMPs and erosion control.

**(3) Permit required**

C: Eliminate the entire provision. Portions are not consistent with NR 151. This would force counties to create an additional permit program to regulate construction erosion. This is another unfunded mandate.

C: Size requirements are very small.

**(4) Permit exemption**

C: Eliminate the entire provision. Portions are not consistent with NR 151. This would force counties to create an additional permit program to regulate construction erosion. This is another unfunded mandate.

C: Construction permitted under Comm 20-22 must also be exempt.

## NR 115.21 Nonconforming uses and structures

C: Our general observation regarding this section is that it is difficult to understand. We recommend that this section be revised to clearly state what is and is not accepted.

C: This section, in general, has conflicts, is difficult to understand, and does not have useable language. Since the DNR is proposing to allow counties to adopt alternative standards, we did not spend a lot of time reviewing this.

**(1) Purpose**

C: As stated previously, we question the department's legal authority to require counties to regulate nonconforming structures. The purpose section should be amended to include "allowing property owners have reasonable use and enjoyment of their property" and "expanding the tax base of counties

**(3) Nonconforming accessory structures**

C: The added language for Accessory Structures is not acceptable. We are back to the same problem that we have raised before – you cannot treat accessory structures the same as principal structures. Most accessory structures do not have a "foundation" as that term is generally used in the construction industry. Even if you were to consider the base or footings to be a foundation, how do we determine what the "foundation" is on a deck or patio? Does this mean that if we are leveling the sand under a corner of a patio we have to move the whole patio to a compliant location? What about the base of a retaining wall? This is a significant concern.

C: This provision is very clear and concise.

**(4) Nonconforming principal structures**

C: The draft presents reasonable and clear rules for expanding or replacing non-conforming houses. It provides a whole lot more freedom and options than currently in effect for property owners, even re-building foundations. The addition of the chart that gives the maximum size of a structure depending on how far it is set back, foot by foot, is very nice. It provides fairness to all property owners. It will eliminate complaints of arbitrary limits by owners wishing to expand their non-conforming house. The draft is reasonable in not allowing forward or sideways expansion within 75 feet of the lake. Let's hold firm on that.

C: While this procedure is an improvement over prior proposals, the maximum footprints are uniformly too small to allow for even a modest-sized home and garage. A cottage with a two-stall detached garage would be limited to less than 500 square feet of living area if its porch was 35-feet from the water. Appendix A should be revised to accurately reflect the numbers proposed by Mr. Schiffmann.

C: NR 115.21(4)(d)2. has been stripped of its value in the latest draft. Previously, replacement was allowed under this part even if there was no foundation, and a foundation could be added if the whole structure was 35 feet or more from the OHWM. Now, if the structure doesn't have a foundation, you can only "replace" it with a structure behind the 75-foot setback. This is a significant erosion of flexibility.

Flexibility was also lost under NR 115.21(4)(d)3. Under the current draft, you must be more than 50 feet back to structurally alter or replace the existing foundation, instead of the previous 35 feet. At the same time, this section does not allow a property owner to replace a structure unless it is built just as close to the OHWM as the original structure. Owners should be allowed to increase the setback of their replaced structures, to further the purposes of this chapter.

C: This provision (NR 115.21 (4)(e)) also seems to prohibit these methods to be used in conjunction with increasing the structure setback. This is counterproductive to the purposes of this chapter, and should be allowed as an incentive to people to move their structures away from the OHWM.

C: The proposed matrix for expansion as outlined in Appendix A is a much more equitable solution than what was previously proposed. However, the proposed maximum square footage standards seem random and fail to reflect current market preferences for waterfront homes. Furthermore, the restrictions on footprint square footage in Appendix A reflects the department's philosophy

that nonconforming structures must eventually be brought back into compliance. We strongly disagree with this philosophy and recommend that the rule should be amended to allow for expansions of nonconforming structures behind the setback, so long as the improvements are meet the applicable development regulations.

C: Great concept, but I feel the allowable square footages are too low and need to be increased in size more consistent with what I had proposed in November. Also, what happens when your expansion gets to or crosses the 75' line, what's allowed? I still like my formula and sizes.

**(6) Mitigation system**

C: Requiring mitigation in the form of improving/upgrading the primary buffer when non-conforming houses are expanded or replaced is an important program. The draft is reasonable in requiring mitigation proportional to the expansion or alteration of the house. It seems that discussions at committee meetings have produced good results on this subject.

C: The term "potential" in (a) is confusing and should be deleted.

C: This draft includes significant changes in the mitigation section. Previously, the county had the ability to design a proportional mitigation plan. Now, the DNR is telling the counties how to do that. Specifics include: inspection and if necessary, upgrading, of the septic system, shoreland buffer preservation and establishment, etc, stormwater management, and removal of non-conforming structures. These changes took what was a legitimate minimum standard and replaced it with an ordinance. In large part, the progress made with this provision has been lost.

C: Mitigation system should be 100% left up to the counties.

**(7) Alternative nonconforming structure standards**

C: The proposed alternative standard is a clear expansion of the "nonconforming use" provision in Wis. Stat. § 59.69(10) and the current NR 115.05(3)(e), which clearly limits the "50% rule" to structures which are being used for an illegal trade or purpose. In its response to Comment #63 from the previous rule draft, the department indicates that its legal authority for this expansion comes from "statutory objectives of program, recommendations of advisory committee members, and comments received from the public at listening sessions." This response is troubling given that (a) Wis. Stat. § 281.31 does not contain any language relating to the regulation of nonconforming structures, (b) I don't recall the majority of advisory committee members making such a recommendation to the department, and (c) according to the responses from the public listening session comment sheet, the majority of the public supports the concept that "when a structure straddles zones, the regulations of the zone where the modification is proposed shall prevail." In light of this seemingly contrary information, could you please clarify in detail how this expansion comes from "statutory objectives of program, recommendations of advisory committee members, and comments received from the public at listening sessions?"

C: Should read "counties may adopt standards that are different than the standards in ….".

C: This is a step in the right direction as it provides flexibility for counties. However, we feel that it should state that counties may adopt standards rather than apply to the Department. This would streamline the process.

### NR 115.23 Adoption of administrative and enforcement provisions

C: Regarding subsection NR 115.23 (2), revise the second sentence in this paragraph to read "The zoning administrator may contact the appropriate office of the department to request an official determination of navigability or the location of the ordinary high water mark by department staff." The current language uses the phrase "if questions arise" which would make the procedure to be followed very unclear.

C: Regarding subsection NR 115.23 (6), a variance runs with the property. A variance cannot have an expiration date.

C: Regarding subsection NR 115.23 (7), the current draft includes purpose sections as a way of limiting the availability of variances. If this is not the intent, it should be clearly stated that the purpose sections are not to have that effect. If this is the intent, the restriction is beyond the authority of the Department and is counterproductive to the balancing process that occurs each time a variance is considered.

### NR 115.25 Department duties

C: The department duties for assistance to counties say the department shall provide assistance to counties "to the full extent of its available resources". The counties in the State of Wisconsin do not have the option to enforce NR 115 to the full extent of its available resources. This is essentially an exemption for the State to say they do not have the resources to help an individual county or counties in the administration of NR 115.

### General Comments

C: Lakeshore buffers and non-conforming houses have been the two most important topics of discussion by the Lakeshore Advisory Committee. Buffers are important to provide good protection of the lakes and there is a need to clarify and simplify rules for maintenance or expansion of non-conforming houses. While it's not ideal, I believe that the draft of January 4 (hereinafter "draft") does meet these essential objectives.

C: The draft remains far too prescriptive and detailed. It is written more as an ordinance than a guiding regulation. Counties will find it burdensome to administer and property owners will find resulting local ordinances to be very complex to understand. This is not a formula for compliance. Environmental standards should be defined in the rule, with counties required to prescribe specific means in their local ordinances.

C: The insertion of purpose statements at the beginning of nearly all of the subchapters is not necessary, and raises suspicions that the department has an undisclosed motive. No other administrative rule utilizes so many purpose statements. They should be deleted.

C: The one comment I would make along that line is that Plans and actions don't have to be as sophisticated as the academic considerations might be. The important thing is that people are aware of the concerns and have enough interest to address in a forthright manner. Few parcels along a shoreline and even back in are identical. I think most of the people at the table realize that. That's why it is important for the counties to be the controllers. They tend to have a close association with both the land and the people.